IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.259 OF 2005
IN
SUMMARY SUIT NO.2614 OF 2004

Sharad Chandra Vinayak Dongre ....Plaintiff

V/s.

M/s. K. T. Dongre & Co., Pvt. Ltd. ....Defendants

Mr.Pradip Sancheti i/b. Sunil & Co.for the Plaintiff.

Mr.D. Y. Chitnis for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 29TH NOVEMBER, 2005.

P.C. :

1. The suit is filed to recover an amount of almost Rs.50,00,000/- and interest.

2. By a letter dated 17/01/1994 the defendants confirmed and certified that the amount of loan given by the plaintiff to the defendant-company was Rs.41,14,525/-. It was also stated that the amount had been shown in the books of account of the defendants under the heading "Debts due to Directors". The defendants executed a Writing dated 30/08/2001 addressed to the plaintiff reiterating what is stated in the letter dated 17/01/1994. In this letter it is further stated that the said amount would be paid by

the defendants as and when demanded by the plaintiff.

3. On behalf of the defendants it is contended that the liability of the company stood extinguished by virtue of clause 9 of an agreement dated 22/03/1994 entered into between Gondhalekar Hospital Pvt. Ltd. and one S.V.Dongre i.e. the plaintiff, V.S.Dongre and Smt.Usha A.Dahanukar.

4. Clause 9 of the said agreement reads as under :-

> . "That the purchaser shall take over the Company along with all the liabilities as have been recorded on date and also all the assets including the land, building, machinery, factory etc. belonging to the Company and also all the patents and trademarks etc. that may belong to the Company."

5. In respect of this claim, the plaintiff-petitioner had filed Company Petition No.809/2003 for winding up. By an order dated 04/03/2004 A.M.Khanwilkar J., construed the said clause and held that the same cannot extricate the

company from the liability to pay the amount taken from the petitioner by way of loan. After a detail discussion on the merits of the dispute, the learned Judge held that the company had also promised to pay the amount, that the debt is established from the aforesaid documents and that the defence on behalf of the defendant was not bona-fide. The learned Judge accordingly admitted the company petition.

6. Being aggrieved by the said order and judgment, the defendant herein filed an Appeal (Lodging) No.155/04. The Division Bench, by an order dated 27/04/2004 dismissed the appeal. The Division Bench held that the liability had been acknowledged by the defendant through out. The Division Bench further confirmed the reasoning of the learned single Judge in respect of said agreement dated 22/03/1994 and held that there was no merit in the defence in this regard. The Division Bench expressly held that the agreement created between parties does not discharge the liability of the defendant in any manner whatsoever.

7. There is, therefore, no substance in the aforesaid contention.

8. It was further argued on behalf of the defendant that the Company Petition as well as the Appeal was not properly argued by the earlier Advocate. He submitted that clause - 9 was not properly interpreted by the earlier Advocate, who appeared on behalf of the defendant. I am not inclined to accept this submission. In any event, the above judgments have expressly considered and construed the said clause and rejected the said contention, now sought to be raised before me. Even assuming that the orders are not binding on me, I am in respectful agreement with the arguments raised on behalf of the plaintiff.

9. Lastly, it was submitted that these acknowledgments have been made by the son of one Dr.V.V. Gondhalekar. It is important to note that the present management had purchased the majority share holdings in the defendant company. They valued the price, taking into consideration the suit liability. This defence is nothing, but an attempt to wriggle out the Company’s liability to benefit themselves.

10. It is further pertinent to note that the acknowledgments were made on the instructions of and by the son of Dr.V.V. Gondhalekar who is a part of

the present management. His son was a Director at the relevant time and authorised to issue the above letters and acknowledgment. The amount has been consistently shown in the balance sheet of the Company. Unfortunately, his son has now expired. That the proceedings have been adopted after the expiry of his son does not militate against the plaintiff's claim in the suit in any manner whatsoever.

11. There is however no agreement to pay interest. Interest was first demanded by the plaintiff's Advocate's notice dated 16/12/2002.

12. In the circumstances, the Summons for Judgment is made absolute and suit is decreed in the sum of Rs.41,14,525/- together with interest thereon at the rate of 12% p.a. from 16/12/2002 till payment and/or realisation and costs.

. Refund as per rule.